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1st February 1993

PADL/LTT/31787
PM 1337

May 14, 1993

Dear Jim,

EUROPEAN PATENT APPLICATION NO: 90312672.0
OUR FILE: 31787

I enclose a copy of the first European action, a response is due to be filed by 14 May 1993.

No prior art has been applied to the claims. However, the Examiner has raised some objections to the language of Claim 1. Some formal objections to the format of the claims and specification have also been raised.

In Claim 1, the Examiner has objected that the feature of heating the flavor-generating medium without combustion has been omitted. A similar objection was raised by the Australian Examiner and has been dealt with by amendment. However, the European Examiner has made it clear that he will not look favourably on a claim which is limited by the use of a disclaimer ('not burned'). The relevant Examiner's guideline states that 'a disclaimer may be used only when the remaining subject matter cannot be defined more clearly and concisely by means of positive features.' The Examiner is of the view that it is possible to include in Claim 1 features of the control means which prevent overheating. I should appreciate your comments and instructions on this point.

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Source: https://www.industrydocuments.ucsf.edu/docs/yjnj0000

The wording objected to in paragraphs 1.2 and 1.3 was amended during prosecution before The US Patent Office. The term 'pre-determined' was replaced by 'pre-measured' and the passage defining the sequence of heating of the charges was re-written. Similar amendment to the European claim would appear to overcome both objections. Please let me know if this would be acceptable to you or let me have your alternative instructions.

In paragraph 2 a number of formal objections to the claims have been raised. We can deal with all of these without your specific instruction. We are required to characterise the claim over US 3200819 which the Examiner believes to be the closest prior art. This document (Gilbert) was cited in the European search report. If you believe that any of the art cited by The US Patent Office is more relevant, we should draw this to the Examiner's attention and characterise the claim accordingly. It may be that US 4735217 (Gerth) or US 2104266 (McCormick) would be more appropriate candidates for the pre-characterised portion of the claim.

The official letter is due for response by 14 May 1993 and I look forward to receiving your instructions in good time before that date.

Yours faithfully

P.A.D. LLOYD

cc J H Ingerman Esq - Fish & Neave

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